

CASE MANAGEMENT WORK GROUP

ONE-YEAR REPORT

Expedited Track for Appeals from Summary Disposition Orders

February 28, 2006

Work Group Members:

Denise Devine
Terence Flanagan
Donald Fulkerson
Carl Gromek
John Jacobs
Judge Peter Maceroni
Mary Massaron Ross
Timothy McMorrow
Sandra Mengel
Douglas Messing
Larry Royster
Judge Michael J. Talbot
Evelyn Tombers
Hannah Watson
Chief Judge William C. Whitbeck, Chairperson
Justice Robert P. Young, Jr.

ONE-YEAR REPORT OF THE CASE MANAGEMENT WORK GROUP

I. Introduction

In November 2003, the Michigan Supreme Court directed the Court of Appeals to develop a plan to reduce delay in the management of civil cases. Chief Justice Corrigan and Chief Judge Whitbeck jointly appointed members of the bench and the appellate bar to staff this effort. See *First Report of the Case Management Work Group*, published in February 2004 and accessible at http://courtofappeals.mjud.net/pdf/First_Report_Of_Case_Management_Workgroup1.pdf.

Following the Work Group's proposal in the *First Report* that the Supreme Court authorize the Court of Appeals to conduct a two-year experiment with an expedited track specifically for appeals from orders granting or denying summary disposition, and after taking public comment on the proposal, the Michigan Supreme Court issued Administrative Order 2004-5 on October 5, 2004.

Administrative Order 2004-5 embodies the original governing principles for the two-year experiment of significantly expediting appeals from circuit court orders granting or denying summary disposition. This experiment commenced on January 1, 2005. Its ultimate goal was and is to receive, process, and decide such appeals within roughly 180 days of filing. The colloquial term *90/90 Track* (some also use the phrase *Rocket Docket*) refers to the roughly 90 days that AO 2004-5 provides to brief the case and secure the lower court record, and the 90 days or so that the AO provides to review the briefs and record, hear oral argument (if any), and issue an opinion.

II. Original Expedited Track Timeline

AO 2004-5 provides the following basic timeline¹ for filing and processing an appeal by right from an order granting or denying summary disposition.² The timeline set very tight increments within which the practitioners were to act in order to secure judicial review of certain motions, preserve the right to oral argument, and avoid the assessment of costs and possible dismissal for dilatory performance. Further, intricate rules controlled briefing deadlines and these rules proved challenging to apply for both the Court and the practitioners.

Cumulative Time	Principal Filing Requirement	Related Filings or Options
Day 0	Claim of appeal filed, with evidence that transcript was either ordered, waived by appellant, or there was no record to be produced.	Motion to remove from expedited track (if any) filed with claim of appeal. Lower court record requested from trial court as soon as appellate jurisdiction confirmed and filing deficiencies corrected.

¹ A comprehensive recitation of the timeline may be found at pp 8-10 of the Work Group's *First Report*, http://courtofappeals.mjud.net/pdf/First_Report_Of_Case_Management_Workgroup1.pdf.

² This track is also available to appeals by leave, but the Court does not expedite such cases until it grants leave. In those cases, the time for filing briefs would usually begin to run on the date of the order granting leave to appeal.

Day 28	Transcript filed by court reporter. Timely filing earns premium page rate.	If transcript is not timely filed, ordering party must move to show cause court reporter(s) within short time frame to preserve ability to timely file brief on appeal.
Day 56	Appellant's brief filed 28 days after transcript filed.	14-day extension of filing deadline available for good cause shown. Form motion accessible on Court's website. If brief is not timely filed, attorney is assessed costs and warned of involuntary dismissal if filing not made in 7 days.
Day 77	Appellee's brief filed 21 days after appellant's brief served on appellee.	14-day extension of filing deadline available for good cause shown. Form motion accessible on Court's website.
Day 84	Briefs and record forwarded to research division for preparation of staff report.	Case assigned to research attorney as priority matter.
Day 119	Report completed by research attorney.	Case scheduled as priority on next available case call.
Day 147	Routine SD case submitted to judges on summary panel case call. If desired, summary panel can schedule oral argument during following month's complex panel. Non-routine SD cases submitted to judges on regular or complex case calls. Oral argument provided if parties preserved.	
Day 175	Three-judge panel finalizes opinion.	
Day 182	Clerk's Office releases opinion.	

III. Interim Report – Proposals for Modification

In November 2005, the Work Group sent to the Supreme Court its first status report on the project. This status report was a detailed proposal to modify some of the procedures that governed the expedited track. The transmittal letter that accompanied the proposed amendments indicated that the expedited track had attracted a burgeoning caseload of summary disposition appeals. Moreover, the Work Group was concerned that “the various truncated time frames for

the ordering of transcripts and the filing of motions to remove, to show cause court reporters, and to extend time to file briefs complicates the management of these cases. When combined with differences in the processes and procedures used in the various trial courts, these details have proven to be a significant drain on practitioner and Court resources for which there is no conceivable benefit. Further, the practitioners have indicated a significant dissatisfaction with the option of allowing appellant to waive the transcript without the agreement of appellee(s).” (Letter to Chief Justice Clifford W. Taylor, October 27, 2005, page 1.)

To resolve the concerns noted in the October 27 letter, the Work Group proposed modifications to the expedited track to simplify the presentation and processing of these cases during record production and briefing and to give both the parties and the Court more flexibility in managing these cases. As summarized in the October 27 letter, the Work Group proposed these modifications to accomplish the following:

- If there were hearings at the trial court level, the appellant would either order the transcripts or the parties would waive them by stipulation. An appellant would no longer be able to waive the transcripts without the agreement of appellee(s).
- The litigants would append specified trial court documents to applications for leave and answers thereto.
- The litigants could file motions to remove the case from the expedited track at any time, rather than within narrowly specified time frames, although filing the motion most closely in time to discovery of the basis for removal would maximize the likelihood that the motion would be granted.
- If a case were to be removed from the expedited track, the order directing removal would state whether, and the deadlines by which, the parties might be entitled to file standard briefs.
- If a transcript were ordered, the appellant must present evidence of the ordering with the claim of appeal or application for leave, and the Court would enforce this requirement under the authority of MCR 7.201(B)(3).
- If an ordered transcript were to be untimely filed, any party could file an appropriate motion at any time, although filing as early as possible under the circumstances of the case would maximize the likelihood of success. The Court would not apply the narrow deadlines for such motions in the original AO. If a motion were to be filed, the subsequent order would state the time for filing any outstanding brief(s).
- There would be significant streamlining of briefing deadlines. Absent an order that resets the time, and regardless when the transcript is filed, appellant’s brief would be due 56 days from the filing of the claim of appeal or 28 days from the certification of the order granting leave to appeal. The time for filing an appellee’s brief and any reply brief would run from the date of service of the preceding brief. Appellees would have 28 days to file their briefs, rather than the 21 days contained in the original administrative order.

- Just as an appellant could rely on its application for leave as its brief on appeal, appellees would also have the option of relying on their answers to applications for leave as their briefs on appeal.
- With proper notation, any appellee's brief could omit the specified appendices if those documents were appended to appellant's brief.
- Finally, the Court would slightly delay requesting the trial court record until 28 days after it confirmed jurisdiction and the parties corrected deficiencies, to allow more time for ordered transcripts to be filed with the trial court and archived with that court's record, while still ensuring that the Court receives that record by the time briefing is concluded.

On December 21, 2005, the Supreme Court issued Amended Administrative Order 2004-5, incorporating all of the Work Group's proposals. Appeals on and after January 1, 2006, will be processed under the provisions of the amended AO. Appeals before that date will continue through the appeal process under the provisions of the original AO. In this way, the Supreme Court, the Court of Appeals, and the practitioners will have the opportunity to evaluate two substantial samples of cases that the Court processes on the expedited track under slightly variant procedures.

IV. One-Year Statistical Review

Commencing in February 2005, the Court of Appeals has published statistical reports on its website at http://courtofappeals.mijud.net/resources/90_90_Reports.htm. Following is a cumulative 3-, 6-, 9- and 12-month statistical summary of the Court's experience with the original version of the expedited track. Readers should note that the data for each period is cumulative of that period and the prior periods; the data in the final pair of columns reflects the entire year.

CHART 1
2005 Expedited Summary Disposition Track
Cumulative Statistics Covering 3, 6, 9 and 12 Months

	<u>Thru Mar</u>		<u>Thru Jun</u>		<u>Thru Sep</u>		<u>Thru Dec</u>	
SD Type Appeals Filed in '05	421		860		1297		1769	
SD Type Appeals Filed in '04	332		690		1067		1476	
Difference	89		170		230		293	
Placed On 2005 SD Track								
Total	393		806		1195		1594	
Appeals by Right	212	60.6%	478	62.4%	708	61.4%	976	62.0%
Appeals by Leave	138	39.4%	288	37.6%	445	38.6%	599	38.0%
Unspecified (Pending Review)	43		40		42		19	

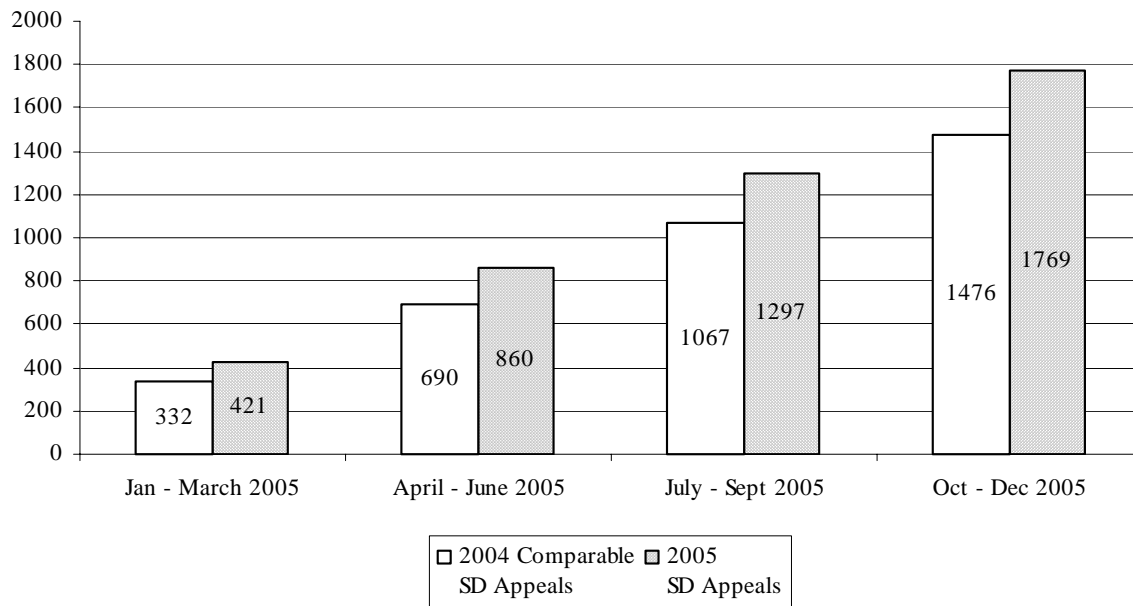
	<u>Thru Mar</u>		<u>Thru Jun</u>		<u>Thru Sep</u>		<u>Thru Dec</u>	
Motions to Remove								
Filed	18		40		55		75	
Granted	6	46.2%	20	55.6%	25	51.0%	28	43.1%
Denied	7	53.8%	16	44.4%	24	49.0%	37	56.9%
Pending	5		4		6		10	
Administrative Removals	2		10		13		16	
Transcripts								
Cases with TR Orders	163		395		610		838	
Cases with TR Waivers	7		18		29		37	
Cases with No Record	10		24		34		46	
% TRs Timely Filed	99.9		91.4		90.0		90.0	
Motions to Extend Briefing								
Filed	13		84		157		243	
Granted	10	76.9%	69	87.3%	134	88.7%	191	87.2%
Denied	3	23.1%	10	12.7%	17	11.3%	28	12.8%
Pending	0		5		6		24	
Appellants' Briefs								
Filed	89		352		590		848	
Timely	76	85.4%	276	78.4%	486	82.4%	712	84.0%
Average Page Count	21		17.8		18.2		18.6	
Reply Briefs Filed	6		93		216		344	
Appellees' Briefs								
Filed	47		323		594		868	
Timely	44	93.6%	280	86.7%	511	86.0%	773	89.1%
Average Page Count	19		17		17.4		18	
Post Briefing								
Cases Submitted on Call	3		120		305		481	
Summary Panel (no OA)	3	100.0%	84	70.0%	145	47.5%	182	37.8%
Regular Panel	0		36	30.0%	160	52.5%	299	62.2%
Opinions Issued								
Total Opinions	n/a		48		201		342	
Published Authored	n/a		1	2.1%	7	3.5%	12	3.5%
Published Per Curiam	n/a		3	6.3%	7	3.5%	11	3.2%
Unpub'd Per Curiam	n/a		40	83.3%	172	85.6%	302	88.3%
Unpub'd Memo	n/a		4	8.3%	15	7.5%	17	5.0%
Opinions In 180 Days	n/a		100.0%		82.7%		69.3%	
Opinions In 190 Days	n/a		100.0%		89.8%		77.2%	

	<u>Thru Mar</u>	<u>Thru Jun</u>	<u>Thru Sep</u>	<u>Thru Dec</u>
Orders Issued (Dispositive)				
Total Dispositive Orders	49	137	361	497
Orders In 180 Days	100.0%	100.0%	99.0%	98.0%

From the Work Group's perspective, these data reflect some highlights of the project that the Work Group anticipated and some that the Work Group did not anticipate.

- Overall filings increased in 2005.** Practitioners filed appeals from summary disposition orders at a higher rate in 2005 than in 2004. Neither the bench nor the bar anticipated this increase. Members of both groups have since hypothesized that this increase may be at least partially the result of practitioner advice to clients that appeals that might formerly have been avoided due to delay on appeal should now be filed because a disposition will be secured within about 6 months. Graph 1 illustrates the increased rate of filing appeals of summary disposition orders:

GRAPH 1
Increased Filing Rate
(Cumulative)



- Appeals by leave increased in 2005.** Practitioners filed proportionately more appeals by leave from summary disposition orders in 2005 than in 2004. In 2004, practitioners filed appeals by leave from summary disposition orders in about 36% of the cases. In 2005, however, practitioners filed appeals by leave from such orders in 38% of the cases. This is a small increase but it may also reflect increased interest in attempting such appeals if the disposition can be had on an expedited basis.

- **The parties rarely filed motions to remove.** Practitioners filed motions to remove in only 75 of some 1,600 appeals. The Court urged practitioners to use a form motion to remove that was provided on the Court's website. The Court designed this form to focus on removal factors that are pertinent to the Court's disposition of such motions. The practitioners' ability to view the form motion and evaluate potential removal requests in light of the factors stated on the form may serve to dissuade them from requesting removal for reasons other than those specified on the form.
- **The Court's disposition of motions to remove evolved during the year.** The Court granted slightly more than 46% of the motions to remove from January through March but only 43% of the motions over the entire year. The Court also administratively removed 16 cases during the course of staff review of the filings throughout the life of the appeals. By motion or administrative order, the Court removed a total of 44 appeals from the expedited track, as compared to the 1,594 appeals that were processed on the expedited track in 2005.
- **The practitioners ordered transcripts in the overwhelming majority of appeals.** Although the original AO permitted the appellant to waive the transcripts without the agreement of or input from appellee, the practitioners ordered transcripts in 91% of the cases in which practitioners filed transcript forms (usually in appeals by right). This is a much higher rate of transcript production than some members of the Work Group anticipated.
- **Court reporters timely filed the vast majority of the ordered transcripts.** The original and amended AO's both impose a substantially shorter deadline for production of summary disposition transcripts than the court rules provide for generic appeals (28 days compared to 91 days). Court reporters who timely file summary disposition transcripts, however, are entitled to a premium page rate under a statute that the Legislature enacted to complement the expedited track. The premium rate appears to have had the desired effect of securing timely filings despite the shortened timeline: court reporters filed timely transcripts in these cases at a rate of 90%.
- **The practitioners rarely filed motions to extend briefing time but the Court often granted such motions.** Practitioners filed motions to extend briefing deadlines for about 14% of the briefs. The Court granted slightly more than 87% of these motions. As with motions to remove, the Court urged the parties to use a form motion to extend time that was provided on the Court's website. The Court designed this form to focus on factors that are pertinent to the Court's disposition of such motions. The practitioners' ability to view the form motion and evaluate potential extension requests in light of the factors stated on the form may serve to dissuade practitioners from requesting extensions for reasons other than those specified on the form.
- **The practitioners timely filed briefs more than 80% of the time.** Whether with Court-ordered extensions or within the original deadlines, and despite both a significantly shortened timeline *and* a prohibition on stipulated extensions as compared to more generic appeals, appellants timely filed their briefs 84% of the time, and appellees timely filed their briefs 89% of the time.

- **Briefs averaged fewer pages than the AO permitted.** Compared to the 35-page limit established in the AO, and the 50-page limit established by court rule for most appeals, practitioners filed briefs averaging about 18 pages in expedited track cases in 2005.
- **More appeals went to regular panels than to summary panels.** The Work Group anticipated that most of the cases on the expedited track would go to summary panels (three-judge panels hearing 60 cases per month without argument, with the option to order that specified cases be adjourned to the succeeding month's complex panel if argument was needed). However, the unexpectedly high caseload paired with the relative complexity of some of the cases on the track led to an early decision to submit appropriate cases to regular panels so that they could be disposed as closely as possible to 180 days of filing. Over the course of 2005, the submission ratio went from roughly 30% regular panel submissions through June to 62% regular panel submissions for the entire year.
- **The Court issued more than 2/3 of its SD track opinions within 180 days.** Due perhaps to the unanticipated size of the caseload processed on the expedited track in 2005, the Court's ability to issue opinions within 180 days of filing was somewhat compromised. The Court will focus on this issue in early 2006 as administrators and staff work to isolate and resolve the cause of delay in the roughly 30% of the expedited track cases that were disposed by opinion in more than 180 days. It may be that there are more cases on this track than the present bench and staff can process within 180 days (given staffing levels necessitated by the Court's budget appropriation). But the Work Group may also identify other causes that are capable of resolution.

V. Delay Reduction Results

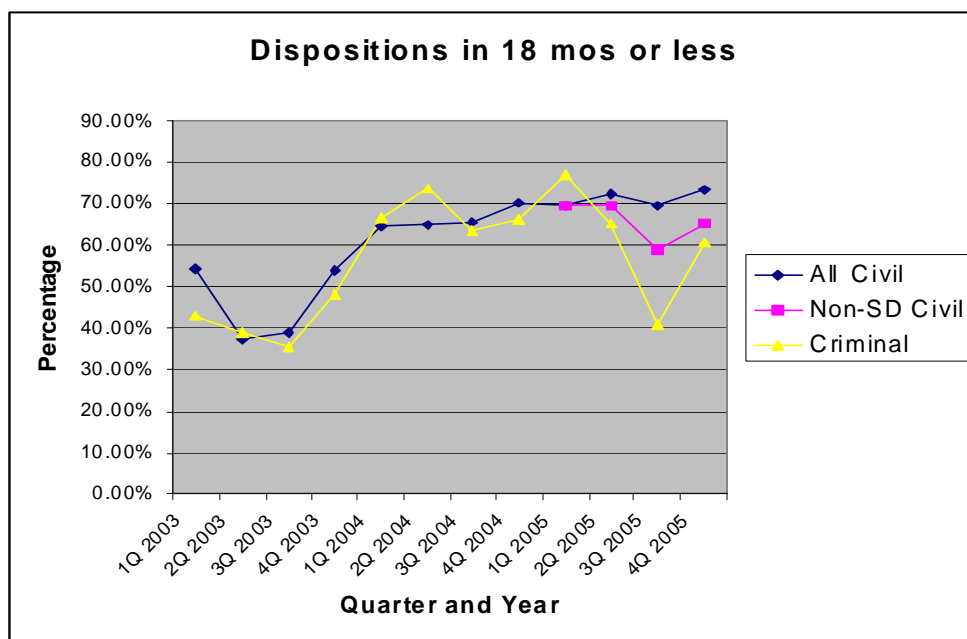
Chart 2 (below) compares the *average* time to disposition of opinion cases that proceeded on the expedited track in 2005 compared to the average time to disposition of other opinion cases in the same period. More detailed information on this aspect of case management at the Court of Appeals can be found at <http://courtofappeals.mijud.net/resources/drwg.htm>.

CHART 2
Delay Reduction Statistics

2005	Overall Average	Regular/Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR	Summary Disp Track
Intake	203	221	173	219	133	132	69
Warehouse	146	140	157	175	20	15	35
Research	70	79	55	73	56	56	32
Judicial Chambers	30	31	29	31	26	24	25
Total	449	471	414	498	235	227	161

Graph 2 illustrates the percentage of opinions issued within 18 months of filing in three categories of cases: all civil cases, all civil cases *not* including appeals on the expedited summary disposition track, and all criminal cases. This graph illustrates the effect of the expedited track cases on the rate with which the Court disposed of non-summary disposition civil appeals within 180 days. Although the rate with which the Court disposed of all civil appeals (which includes expedited summary disposition cases) within 180 days remained fairly constant, the rate with which the Court disposed of non-summary disposition civil appeals within 180 days dipped slightly in early to mid-2005 before recovering slightly in the 4th quarter of 2005.

GRAPH 2
Dispositions By Opinion Within 18 Months of Filing



V. Practitioner Feedback Concerning the Expedited Track

Throughout 2005, the Michigan Court Practice Committee of the Appellate Practice Section of the State Bar of Michigan collected practitioner feedback on their experiences with the expedited track for appeals from summary disposition orders. That Committee has just released its first report on this feedback and the Council of the Appellate Practice Section has authorized its inclusion as an appendix to the One-Year Report of the Case Management Work Group. The Committee's report is attached here as Appendix A.

VI. Conclusion

As the data and the practitioner feedback compiled in this report illustrates, both the bench and the bar give essentially positive marks to the first year of the expedited track for appeals from summary disposition orders. To the extent that the original policies and procedures created difficulties for the participants, the Supreme Court has recently amended the Administrative

Order to streamline the process. The Work Group welcomes the opportunity to use the next twelve months to assess the efficacy of the amendments. In mid-year 2006, and again at the close of the year, the Work Group will update its report on all of these matters.

Appendix A

Progress Report No. 1

Practitioner Feedback on Expedited Summary Disposition Appeals Under Administrative Order 2004-5

APPELLATE PRACTICE SECTION

STATE BAR OF MICHIGAN



CHAIRPERSON
DEBORAH HEBERT
SOUTHFIELD

CHAIRPERSON-ELECT
LINDA M. GARBARINO
DETROIT

SECRETARY
BARBARA H. GOLDMAN
SOUTHFIELD

TREASURER
PAUL R. BERNARD
DETROIT

COUNCIL
JOHN J. BURSCH
GRAND RAPIDS
JUDITH A. CURTIS
GROSSE POINTE
CHRISTINA GINTER
DETROIT
RONALD S. LEDERMAN
SOUTHFIELD
MARY MASSARON ROSS
DETROIT
JAMES EDWARD WYSZYNSKI
GRAND LEDGE
JANET M. BOES
SAGINAW
TERENCE R. FLANAGAN
HARTLAND
MARCIA L. HOWE
FARMINGTON HILLS
ANICA LETICA
PONTIAC
GERALD F. POSNER
DETROIT
MEGAN CAVANAGH
DETROIT
TIMOTHY DIEMER
DETROIT
ROSALIND H. ROCHKIND
DETROIT
LIISA SPEAKER
LANSING
MICHAEL L. UPDIKE
FARMINGTON HILLS
JILL WHEATON
ANN ARBOR

PAST CHAIRS
J. MARK COONEY
ROCHESTER
DONALD M. FULKERSON
WESTLAND
VICTOR S. VALENTI
SOUTHFIELD

February 1, 2006

Chief Justice Clifford W. Taylor
Michigan Supreme Court
Hall of Justice
925 W. Ottawa St.
P.O. Box 30052
Lansing, MI 48909

Chief Justice William C. Whitbeck
Michigan Court of Appeals
Hall of Justice
925 W. Ottawa St.
P.O. Box 30022
Lansing, MI 48909

Re: Priority Track for Summary Disposition Appeals

Dear Judges Taylor and Whitbeck:

In January of 2005, our Michigan Court Practice Committee began gathering feedback from practitioners who appeared before the Court of Appeals on the priority summary disposition docket under Administrative Order 2004-5. The Committee has now completed its interim report, which compiles information gathered during the first year of this project. A copy of the report is attached.

Our committee will continue to survey practitioners through 2006 and report its findings.

Very truly yours,


Deborah A. Hebert

DAH/jw
Enclosure

cc: Sandra Schultz Mengel

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CHIEF CLERK

PROGRESS REPORT NO. 1

**PRACTITIONER FEEDBACK ON
EXPEDITED SUMMARY DISPOSITION APPEALS
UNDER ADMINISTRATIVE ORDER 2004-5**

January 31, 2005

Committee Members:

Megan K. Cavanagh, Chair
Paul Bernard
Terry Flanagan
Deborah Hebert
Marcia Howe
Mary Massaron Ross
Christine Oldani
Sarah Robertson
Rosalind Rochkind
Noreen Slank
Liisa Speaker
Beth Wittman
Susan Zitterman

Background

Beginning in January of 2005, the Michigan Court Practice Committee of the Appellate Practice Section of the State Bar of Michigan, set out to collect practitioners' feedback on their individual experiences with the Michigan Court of Appeals' Expedited Summary Disposition Track (Administrative Order 2004-5). The committee created a practitioner feedback form which it placed on the Appellate Practice Section's website. In addition, the Court of Appeals placed a link to the feedback form on the court's website. Starting in May of 2005, the Committee began contacting the attorneys of record directly, via email and telephone, as fast-track opinions were issued by the Court each week.

The Committee made personal contact with the attorneys of record in approximately 240 of the expedited appeals which issued to an opinion. In response, the Committee received 57 feedback forms and 52 non-form responses.

The Committee asked practitioners to provide information regarding their individual experiences with respect all aspects of handling an appeal under the new expedited program. Specifically, practitioners were requested to provide some background practice information, such as the type of practice (solo practitioner to large firm with more than twenty attorneys), what percentage of their practice involves appeals, what percentage of their practice involves summary disposition motions, and how many attorneys in their firm specialize in appellate practice. The Committee asked practitioners whether they encountered problems securing transcripts within the time allowed, seeking removal from the expedited track, securing extensions of time or pages for briefing, motion practice, oral argument (or lack thereof), timeliness of opinions and timeliness of the clerk's office throughout the appeal. In addition, the practitioners were given an opportunity to provide feedback regarding the effect of the expedited track on the economics of their practice and on other areas of their practice (including any appeals which were not on the expedited track).

Practitioners' Responses

Transcript Issues

Some practitioners expressed concern that the deadlines set by the Administrative Order for ordering transcripts, seeking extensions for court reporters and show causing court reporters, in addition to the shortened time period allowed for production of the transcript, created significant hardships. Practitioners expressed concern that, at times, the deadlines forced them to file their briefs without the benefit of a transcript. In addition, practitioners expressed concern over provisions of the Administrative Order which allowed the appellant to waive production of the transcript. These practitioners believed that the transcript was critical to a comprehensive appellate review of a motion for summary disposition and thought that the appellant should be required to provide the

transcript (at least of the summary disposition hearing), as the appellant is required to do for non-summary disposition appeals.

These concerns were expressed to and discussed extensively with the Case Management Work Group. The amendment to Administrative Order 2004-5 which went into effect on January 1, 2006 was tailored to address these concerns.

Removal

Practitioners' responses did not indicate any real problem with the process for seeking removal from the expedited track. One concern which was raised, concerning the time for filing a motion to remove, appears to have been addressed by the recent amendment to the Administrative Order.

Extensions of Time

A number of practitioners expressed frustration with the shortened briefing deadlines and suggested that a provision in the Administrative Order which would allow the parties to stipulate to a 14-day extension would be desirable. Allowing the practitioners to stipulate, rather than move the court, for the short extension of time would give practitioners flexibility in managing their caseloads and would presumably reduce the administrative burden of the court related to motions for extension of time. This flexibility is particularly necessary considering that practitioners are operating within the shortened deadlines of the expedited program. Some practitioners even expressed a willingness to pay a filing fee for such stipulations.

Extension of Pages

While no responses indicated any dissatisfaction with the thirty-five page limit for the primary briefs, some practitioners have expressed the view that the five-page limit for reply briefs is too restrictive. These practitioners recommend that page limit for reply briefs on the expedited track mirror the ten pages allowed on the regular docket.

Briefing

A number of practitioners expressed initial confusion with the Administrative Order's requirement that a party's lower court pleadings be attached to the appellate brief. However, again, it appears that the amendment to the Administrative Order provides the necessary clarification.

Other practitioners suggested that the attachment of pleadings requirement was unduly burdensome and unnecessary in light of the fact that the lower court record appears to be received in time for the court's review on appeal.

Progress Report No. 1
Practitioner Feedback on Expedited Summary Disposition Appeals

In general, some practitioners commented that the briefing deadlines provided in the Administrative Order are too short, creating significant scheduling problems for practitioners, especially for solo practitioners or those practicing in small firms. Specifically, practitioners expressed concern over the twenty-one day briefing deadline for an appellee brief. Although the recent amendment to the Administrative Order affords the appellee an extra seven days for briefing, practitioners believe that the ability of the parties to stipulate to a short extension is warranted.

Oral Argument

By far the most prominent concern expressed by practitioners was their dissatisfaction with the lack of oral argument on appeals under the expedited track. While, in practice, a number of the expedited cases are receiving oral argument due, in large part, to the Court's own scheduling requirements, practitioners expressed concern over the fact that, as a general rule, summary disposition appeals would not be given oral argument. Even in cases which were well-suited for expedited briefing, the practitioners still believe that oral argument is critical in the appellate process and would have benefitted the court and the court's opinions in these cases.

In addition, some practitioners have expressed concern over the timeliness of notices for oral argument in expedited cases. Given the tight deadlines that the Administrative Order has imposed on practitioners, especially those practitioners with a heavy summary disposition appellate docket, twenty-one days notice in advance of oral argument is too short a time period to afford practitioners the needed flexibility. The short notice of oral argument is particularly problematic when the practitioners are operating under the assumption, per the Administrative Order, that oral argument will not be scheduled in their summary disposition appeals.

Opinions

Most practitioners did not have any criticism of the Court's ability to issue timely decisions on the expedited track. Given the quick resolution of these cases, frequently without oral argument, some practitioners suggested that motions for reconsideration be more seriously considered in these summary disposition appeals.

Timeliness in general

Overall, the majority of responding practitioners expressed appreciation for the quick resolution of summary disposition appeals under the Administrative Order. Again, while a number of practitioners expressed frustration over the initial time periods (e.g. motions, transcripts, etc), these concerns appear to have been addressed by the recent amendment to the Administrative Order.

Volume of appeals

The Court has indicated that the number of appeals from summary disposition orders has increased significantly. Some practitioners confirmed that their decisions whether to appeal, or to seek leave for an interlocutory appeal, have been influenced by the fact that they can receive a decision within six months of filing.

Economics of Practice

No practitioners indicated that they had to turn away an appeal or give an appeal to another attorney in their firm, in response to the demands of the expedited program. However, some practitioners have indicated that they have had to shift responsibilities within their firm in order to handle the increasing number of expedited summary disposition appeals. These practitioners indicated that, as summary disposition appeals increasingly make up a majority of their appellate docket, the need to shift responsibilities within their firm or to turn away appeals will likely increase.

Conclusion

A majority of responding practitioners are pleased with the implementation of an expedited track for summary disposition appeals. The practitioners appreciate the fact that, under the program, appeals from summary disposition orders can be resolved, for the most part, within six months of filing or granting leave. However, some problems with the actual implementation of the Administrative Order still need to be addressed. Based on the concerns identified by practitioners, the Michigan Court Practice Committee recommends that the following suggestions be considered by the Delay Reduction Work Group, the Court of Appeals and the Supreme Court: (1) oral argument in summary disposition appeals should be scheduled as it is in non-summary disposition appeals, subject to the provisions of MCR 7.214; (2) the parties should be allowed to stipulate to a 14-day extension of briefing deadlines; and (3) the page limit for reply briefs should be increased from five pages to ten pages.

During 2006, the Michigan Court Practice Committee will continue to gather responses from practitioners and sharing practitioners' concerns and suggestions with the Case Management Work Group, the Court of Appeals and the Supreme Court. We believe that this process benefits both the Court of Appeals and the parties that practice before it. Such continued cooperation can only facilitate a more thorough and productive evaluation of the need for and the benefits and shortfalls of the experimental expedited summary disposition program.